

VIA E-MAIL

August 31, 2006

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

**Re: Docket No. R-1265; Regulation E -- Electronic Fund Transfers**

Dear Ms. Johnson:

NACHA—The Electronic Payments Association has reviewed the Federal Reserve Board's ("FRB") interim rule and request for comment on proposed changes to Regulation E and its Official Staff Interpretations ("Interim Rule and Commentary"). Based on our review, the Interim Rule and Commentary raises new issues with potentially significant consequences that need to be addressed. Therefore, we believe thirty days is insufficient for the industry to understand and fully weigh this impact and request that the FRB extend the public comment period by at least 30 days.

Our concern is that we interpret certain statements in the Interim Rule and Commentary<sup>1</sup> to mean that payees, with respect to pre-authorized EFTs, would also be required to provide the same type of notice that NSF fees could be collected by a separately authorized EFT prior to each and every transaction that might be initiated through the recurring payment relationship, rather than up-front in the initial authorization/contract.

For example, pre-authorized monthly debits for gym or club memberships, utility bill and insurance premium payments, installment loans, lease and rental payments, etc., are and should remain outside the scope of the FRB's proposed NSF notice provisions for one-time ECKs. In such cases, the separate authorization necessary to initiate an NSF fee transaction is covered in the consumer's initial authorization with that payee, not in a separate NSF fee authorization each and every time the payee initiates an EFT debit through that relationship.

If our interpretation is incorrect, and the FRB's intent is to limit the scope of the NSF notice requirements to ECK and other one-time EFTs not being made through a standing authorized payment relationship, then we believe the FRB needs to clarify this in the scope of its rulemaking.

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<sup>1</sup> The Interim Rule and Commentary states:

"A separate notice to obtain the consumer's authorization to electronically collect a fee for items returned not paid due to insufficient funds in the consumer's account must be provided by the payee each time the payee seeks to collect the fee. Thus, the inclusion of authorization language in a contract or initial terms and conditions, for example, in an insurance contract or a utility agreement, would not satisfy a payee's obligation to provide notice each time it may seek to electronically an insufficient funds fee from the consumer's account. See comment 3(b)(2)-3."

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NACHA appreciates the opportunity to comment on this proposal. If you have any questions regarding our comments, I may be reached at (703) 561-3929, or by e-mail at: *imacoy@nacha.org*.

Sincerely,

Ian W. Macoy  
Managing Director